

BENJAMIN W. DULANY*RECORDATION NO. 13396-1 Filed 1425

KENNETH WELLS PARKINSON

DANIEL WEBSTER COON*

ARTHUR C. ELGIN, JR.*

JAMES P. SCHALLER*

JO V. MORGAN, JR.*

JOHN A. NEVIUS

PATRICIA D. GURNE
NICHOLAS STILLWELL McCONNELL**

ALAN R. SWENDIMAN*

SIDNEY C. COUSINS, JR.*

PATRICK L. WOODWARD*

JAMES R. MICHAL*

M. ELIZABETH MEDAGLIA

DAVID H. COX*

MICHAEL J. McMANUS*

JOHN J. BRENNAN, III**

RICHARD W. BRYAN*

CHRISTINE A. NYKIEL*

PAUL S. SCHLEIFMAN*

TIMOTHY R. DINGILIAN*

ANTOINETTE A. LEBEL

RICHARD J. DeFEO, JR.

MARY LYNN REED*

WARREN LUTZ*

* ALSO ADMITTED IN MARYLAND

* ALSO ADMITTED IN VIRGINIA

LAW OFFICES

JACKSON & CAMPBELL, P.C.

ONE LAFAYETTE CENTRE

SUITE 300 SOUTH

1120 20TH STREET, N.W.

WASHINGTON, D.C. 20036-6437

INT'L TELEX: 64706

TELECOPIER (202) 457-1678

(202) 457-1600

May 28, 1987

HAND-DELIVERED

THOMAS SEARING JACKSON*

EDMUND D. CAMPBELL*

OF COUNSEL

MARYLAND OFFICE

2400 A MONROE STREET

ROCKVILLE, MARYLAND 20850

(301) 340-0450

VIRGINIA OFFICE

1008 NORTH RANDOLPH STREET

SUITE 104

ARLINGTON, VIRGINIA 22201

(703) 522-1330

DIRECT DIAL NUMBER

457-1638

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Ms. Noreta R. McGee
Office of the Secretary
Recordation Office
Interstate Commerce Commission
12th Street and Constitution
Avenue, N.W.
Washington, D.C. 20423

RECORDATION NO. 13396-1 Filed 1425

MAY 28 1987 -9 20 AM

INTERSTATE COMMERCE COMMISSION

Re: Equifund L.P.; Citibank, N.A.,
Firemen's Insurance Company of
Newark, New Jersey;
The Connecticut National Bank;
ICC Recordation No. 13396-C, 13396-D,
13396-E, 13396-F, 13396-G, 13396-H,
13396-I and -13396-J

Dear Ms. McGee:

In accordance with the provisions of Section 11303 of the Revised Interstate Commerce Act, 49 U.S.C. § 11303, and Part 1177 of Title 49 of the Code of Federal Regulations, we request, as special counsel for Citibank, N.A., that the enclosed documents be recorded and filed with the Interstate Commerce Commission.

You will find enclosed executed originals of the following documents:

1. Restructure Agreement, dated as of May 15, 1987, among Equifund L.P., Citibank, N.A., and Firemen's Insurance Company of Newark, New Jersey.

Ms. Noreta R. McGee
May 28, 1987
Page two

Document
STAMPED

This Restructure Agreement is intended, in pertinent part, to restructure the Bank Loan Agreement between Citibank, N.A. and Equifund L.P. This Restructure Agreement should be filed and recorded as Recordation No. 13396-~~C~~3 -C

2. Reimbursement Agreement, dated as of May 15, 1987, among Firemen's Insurance Company of Newark, New Jersey, Equifund L.P., and Citibank, N.A. -D

This Reimbursement Agreement is intended, in pertinent part, to provide additional security for Citibank, N.A. in connection with the Restructure Agreement noted above. This Reimbursement Agreement should be filed and recorded as Recordation No. 13396-~~D~~.C

3. Mortgage and Security Agreement, dated as of May 15, 1987 (the "Firemen's Mortgage and Security Agreement"), by and between Equifund L.P. and Firemen's Insurance Company of Newark, New Jersey.

This Mortgage and Security Agreement is intended, in pertinent part, to provide security to Firemen's Insurance Company of Newark, New Jersey for the obligations incurred by said Company in the Reimbursement Agreement stated above. This Mortgage and Security Agreement should be filed and recorded as Recordation No. 13396-~~D~~.D -E

4. Assignment, dated as of May 15, 1987, of Mortgage and Security Agreement, dated as of May 15, 1987, from Firemen's Insurance Company of Newark, New Jersey, to The Connecticut National Bank, as Trustee.

This Assignment is intended, in pertinent part, to assign the rights of Firemen's Insurance Company of Newark, New Jersey under the Mortgage and Security Agreement noted above at paragraph 3 to The Connecticut National Bank, as Trustee. This Assignment should be filed and recorded as Recordation No. 13396-~~E~~ -F

5. Third Amendment (dated as of May 15, 1987) to Mortgage and Security Agreement, dated December 30, 1981 (as so amended, the "Citibank Mortgage and Security Agreement") by Equifund L.P. and Citibank, N.A.

This Third Amendment is intended, in pertinent part, to reflect the changes to the Mortgage and Security Agreement, dated December 30, 1981, by Equifund L.P. and Citibank, N.A., as required by the Restructure Agreement and other documents identified herein. This Third Amendment should be filed and recorded as Recordation No. 13396-~~F~~.F -G

Ms. Noreta R. McGee
May 28, 1987
Page three

Doc: T
STAMPED

6. Assignment, dated as of May 15, 1987, of Mortgage and Security Agreement, dated December 30, 1981, from Citibank, N.A., to The Connecticut National Bank, as Trustee.

This Assignment is intended, in pertinent part, to effectuate the assignment by Citibank, N.A. of its rights under the Citibank Mortgage and Security Agreement, dated December 30, 1981, and the collateral described therein to The Connecticut National Bank, as Trustee. This Assignment should be filed and recorded as Recordation No. 13396-~~2.8~~

- H

7. Trust Agreement, dated as of May 15, 1987, among Equifund L.P., Citibank, N.A., Firemen's Insurance Company of Newark, New Jersey, and The Connecticut National Bank, as Trustee.

This Trust Agreement is intended, in pertinent part, to delineate the relative rights and responsibilities as between Equifund L.P., Citibank, N.A., Firemen's Insurance Company of Newark, New Jersey, and The Connecticut National Bank, as Trustee, with regard to the Railcars and other collateral described therein and the proceeds received with regard to said railcars and other collateral. This Trust Agreement should be filed and recorded as Recordation No. 13396-~~4~~

- I

8. Amended and Restated Equipment Loan Agreement, dated as of May 15, 1987, among Equifund L.P. and Citibank, N.A.

This Amended and Restated Equipment Loan Agreement is intended, in pertinent part, to reflect and incorporate the various changes effectuated through the foregoing seven (7) documents and sets forth in one document the Equipment Loan Agreement, as amended and restated in connection therewith. This Amended and Restated Equipment Loan Agreement should be filed and recorded as Recordation No. 13396-~~0.2~~

- J

The above-referenced documents relate, inter alia, to the right, title and interest in and to certain Railcars, which Railcars are more specifically described in the above-referenced documents; for example and in particular, Exhibit "F" to the Amended and Restated Equipment Loan Agreement, dated as of May 15, 1987.

The parties to the aforesaid documents are as stated above. The addresses of the various parties are as follows:

Ms. Noreta R. McGee
May 28, 1987
Page four

Equifund L.P.
750 Third Avenue
New York, New York 10528

Citibank, N.A.
450 Mamaroneck Avenue
Harrison, New York 10528

Firemen's Insurance Company
of Newark, New Jersey
180 Maiden Lane
New York, New York 10038

The Connecticut National Bank
777 Main Street
Hartford, Connecticut 06115

You will also find enclosed herewith a check made payable to the Interstate Commerce Commission in the amount of Eighty Dollars (\$80.00), which amount is intended as full and final payment of the filing fee to be incurred in connection herewith.

Would you please stamp, as filed, each of the duplicate originals enclosed herewith and return the stamped duplicate originals not used by your office to our office at your earliest possible convenience?

If you have any questions in this regard, please do not hesitate to contact us.

Sincerely yours,

JACKSON & CAMPBELL, P.C.

By:


Richard W. Bryan

RWB/lg

Enclosures As Stated

cc: Richard F. Hahn, Esquire
Mr. Gary G. Groot

RECORDATION NO. 13396 Filed 141.3

MAY 28 1987 -9 20 AM
INTERSTATE COMMERCE COMMISSION

ICC Recording Numbers: 13396,
13408, and 13331. Dates of
Recordation: November 20, 1981,
December 30, 1981, January 4, 1982,
and April 17, 1987.

[Railcars]

THIRD AMENDMENT

(Dated as of May 15, 1987)

to

Mortgage and Security Agreement dated

December 30, 1981

This Amendment dated as of May 15, 1987 made by Equifund L.P., a Delaware limited partnership (the "Grantor"), and Citibank, N.A., a national banking association (the "Bank").

W I T N E S S E T H:

WHEREAS, the Grantor and the Bank entered into a Mortgage and Security Agreement dated December 30, 1981, as amended by a First Amendment dated as of March 1, 1982, as amended by a Second Amendment dated as of March 1, 1987 (the Mortgage and Security Agreement, as so amended, referred to herein as the "Mortgage") to secure, inter alia, amounts payable by the Grantor under a Promissory Note (the "Original Note") dated December 30, 1981 and any notes issued in connection with the rollover or refunding of such Original Note, including, without limitation, nine promissory notes (together with the Original Note, the "Notes") issued pursuant to an Equipment Loan Agreement dated as of March 1, 1982 and between the Grantor and the Bank for the purpose of refinancing the Original Note; and

WHEREAS, concurrently with the Grantor's execution of this Amendment, the Grantor and the Bank have entered into an Amended and Restated Equipment Loan Agreement (as the same may be

M&SA.EQU

modified, amended or restated from time to time, the "Amended Loan Agreement") dated as of May 15, 1987 pursuant to which the Bank has agreed to consolidate the aggregate amounts of principal due pursuant to the Notes into a single Consolidated Note (as defined in the Amended Loan Agreement) and to provide for the payment of certain past due interest and fees accrued in connection with the Notes under a certain Deferral Note (as defined in the Amended Loan Agreement) and to extend the term for repayment; and

WHEREAS, concurrently with the Grantor's execution of this Amendment the Grantor, the Bank, Equilease Management Corporation, a Delaware corporation, and Firemen's Insurance Company of Newark, New Jersey, a New Jersey insurance corporation ("Firemen's") have entered into a certain Restructure Agreement, dated the date hereof (the "Restructure Agreement"), pursuant to which the parties have agreed, among other things, to provide additional security for payments due under the Consolidated Note, the Deferral Note or the Amended Loan Agreement, including, without limitation, a certain Surety Bond (the "Surety Bond") issued by Firemen's; and

WHEREAS, concurrently with the issuance of the Surety Bond the Grantor has entered into a certain Reimbursement Agreement, dated the date hereof (the "Reimbursement Agreement"), with Firemen's pursuant to which it has agreed to reimburse any payments made by Firemen's under the Surety Bond; and

WHEREAS, concurrently with the Grantor's execution of the Reimbursement Agreement the Grantor has entered into a certain Mortgage and Security Agreement, dated the date hereof (the "Firemen's Mortgage and Security Agreement"), with Firemen's pursuant to which the Grantor's obligations under the Reimbursement Agreement are to be secured by an interest in the Collateral (as defined in the Mortgage); and

WHEREAS, the Grantor, the Bank and Firemen's have agreed that proceeds from the sale or lease of the Collateral are to be made to The Connecticut National Bank, as trustee (the "Trustee"), pursuant to a certain Trust Agreement, dated the date hereof (the "Trust Agreement"), among the Grantor, the Bank, Firemen's, Equilease Corporation, a Delaware corporation, and the Trustee, which Trust Agreement provides for distribution of such proceeds according to the priority set forth in the Trust Agreement; and

WHEREAS, the Grantor, the Bank and Firemen's have agreed in the Restructure Agreement that the rights of the Bank under the Mortgage shall be determined in accordance with the aforementioned priority; and

WHEREAS, to continue the Bank's security interest in the Collateral (as defined in the Mortgage), to secure the Consolidated Note and the Deferral Note, to permit the Grantor's obligations under the Firemen's Mortgage and Security Agreement to be secured according to the priority referred to above, to permit

the assignment to the Trustee of the Bank's rights under the Mortgage and of Firemen's rights under the Firemen's Mortgage and Security Agreement, and to make certain further changes to the Mortgage, the parties wish to enter into this Second Amendment to the Mortgage;

NOW, THEREFORE, in consideration of the premises, the parties hereby agree as follows:

SECTION 1. Section 2 of the Mortgage is hereby amended by adding the following sentence to the end thereof:

"Without limiting the foregoing, this Mortgage and Security Agreement is made and given by the Grantor in order to afford security to the Bank for payment in full by Grantor of all amounts payable under the Amended and Restated Equipment Loan Agreement (the "Amended Loan Agreement") between Grantor and the Bank dated as of May 15, 1987 and the Consolidated Note (the "Consolidated Note") and the Deferral Note (the "Deferral Note") issued thereunder and any notes or notes issued in connection with any refunding or rollover of the Consolidated Note or the Deferral Note. In connection with the issuance of the Consolidated Note and the Deferral Note, the Bank is concurrently herewith assigning its rights hereunder to The Connecticut National Bank, as trustee (the "Trustee"), under that certain Trust Agreement dated as of May 15, 1987 (the "Trust Agreement") among the Grantor, the Bank, the Trustee and Firemen's Insurance Company of Newark, New Jersey ("Firemen's") and entering into that certain Restructure Agreement dated as of May 15, 1987 (the "Restructure Agreement") among the Bank, the Grantor and Firemen's."

SECTION 2. Section 4(a) of the Mortgage is hereby deleted.

SECTION 3. Section 4(c) of the Mortgage is hereby amended by adding at the end thereof the parenthetical phrase "(except the lien in favor of Firemen's under the Firemen's Mortgage and Security Agreement)".

SECTION 4. Each of Section 4(h) and Section 4(i) of the Mortgage is hereby amended by adding at the beginning of each such Section the words "subject to the priorities set forth in the Restructure Agreement and the Trust Agreement,".

SECTION 5. Section 6 of the Mortgage is hereby amended by deleting the entire existing text and substituting the following sentence:

"The Grantor will at all times maintain or cause to be maintained insurance in respect of the Collateral to the extent required by Section 4.01(h) of the Amended Loan Agreement."

SECTION 6. Section 7 of the Mortgage is hereby deleted.

SECTION 7. Section 8(a) of the Mortgage is hereby amended by adding the word "Amended" before the phrase "Loan Agreement" in the second line and in the fourth from last line thereof; by substituting the phrase "Consolidated Note and the Deferral Note" for the word "Notes" in the fifth line hereof; and by substituting the words "at the rate set forth in the Amended Loan Agreement and the Restructure Agreement" for the words "at the rate of 20% per annum" in the fifth sentence thereof.

SECTION 8. Section 8(b) of the Mortgage is hereby amended by adding the word "Amended" before the phrase "Loan Agreement" in the third line thereof.

SECTION 9. Section 8(c) of the Mortgage is hereby amended by deleting the words "consented to in writing by the Bank" and substituting therefor the words "entered into in compliance with the Trust Agreement, while it is in effect, and thereafter the Loan Agreement".

SECTION 10. Section 11(b) of the Mortgage is hereby amended by adding the following sentences to the end thereof:

"Notwithstanding anything else to the contrary herein contained, on or before the execution hereof, and so long as the Trust Agreement is in effect, the Grantor shall direct the lessees under the Leases to make payment of all periodic rental payments due or to become due thereunder directly to the Trustee; and provided, further, that the Grantor shall direct any person which shall purchase any of Collateral, or any interest therein, to make payment of the total purchase price directly to the Trustee; and provided, further, that the Grantor shall have the obligation and sole responsibility for billing lessees, keeping corresponding records of invoices and payments, causing lessees to make current and/or past due payments and causing lessees to perform their other obligations under the Leases except that the Trustee shall have the right, upon written notice to the Grantor, to undertake any or all such of such functions. All amounts received by the Grantor as payment of purchase price for any of the Collateral or in respect to the Leases while the Trust Agreement is in effect shall be received in trust for the benefit of the Trustee thereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over to the Trustee to be held or applied as provided in the Trust Agreement."

SECTION 11. Section 14 of the Mortgage is hereby amended by deleting the entire existing text and substituting the following:

"Notwithstanding anything to the contrary contained herein or elsewhere (except as set forth in the proviso below), the Bank agrees that it will not assert, directly or indirectly, in its own name, by or on behalf of the Grantor or otherwise, any claim against any limited or general partner in the Grantor for payment or performance of any duty, liability or other obligation of the Grantor arising hereunder or under the Notes or the Loan Agreement; the Bank hereby waives any claim it may now or hereafter have against any partner in the Grantor pursuant to Section 17-502 of The Delaware Revised Limited Partnership Act with respect to any returned capital contribution and agrees to repay any amount received by it constituting returned capital contributions recovered from any partner in the Grantor notwithstanding the provisions of this Section 14; provided, however, that nothing herein waives or limits the Bank's rights with respect to claims for distributions to partners made in violation of covenants of the Grantor contained in Section 4.02(e) of the Amended Loan Agreement, or with respect to claims against the General Partner of the Borrower for material misrepresentations made in Section 4.1(a), (c), (e) or (f) of the Restructure Agreement. Moreover, nothing in this Section 14 shall act as a limitation on, or waiver of, any right the Bank may have under the Support Agreement dated as of May 15, 1987 among Equilease Corporation, the Bank and Firemen's."

SECTION 12. The Grantor consents to the filing of this Amendment to the Mortgage with the Interstate Commerce Commission pursuant to the provisions of 49 U.S.C.A. Section 11303 (1979) (formerly Section 20c of the Interstate Commerce Act).

SECTION 13. Except as amended hereby, the Mortgage shall remain in full force and effect.

IN TESTIMONY WHEREOF, the parties hereto have each caused this Second Amendment to be duly executed on their behalf as of the day and year first above set forth.

EQUIFUND L.P.

By: Equilease Management
Corporation, General Partner

By: _____

Title: _____

CITIBANK, N.A.

By: _____

Title: _____

STATE OF NEW YORK)

: SS:

COUNTY OF New York)

On this 27th day of May, 1987 before me personally appeared James M. Manning, to me known to be a ~~Vice~~ President of Equilease Management Corporation, the general partner of Equifund L.P. (a party to this agreement) who executed the foregoing instrument, who by me duly sworn said that said instrument was signed on behalf of said corporation in its capacity as general partner by authority of its Board of Directors, and he acknowledged that he executed said instrument as his free act and deed.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

Patricia Riehl

My commission expires: _____

PATRICIA RIEHL
NOTARY PUBLIC State of New York
No. 01R14769589
Qualified in Nassau County
Cert. filed in New York County
Commission Expires Sept. 30, 1988

STATE OF NEW YORK)

: SS:

COUNTY OF N.Y.)

On this 27 day of May, 1987 before me personally appeared Robert D. Parker to me personally known, who being by me duly sworn, says that he is a VP of Citibank, N.A., a national banking association, that said instrument was signed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

Barbara J. Ruby

My commission expires: _____

BARBARA J. RUBY
Notary Public, State of New York
No. 31-8696886
Qualified in New York County
Commission Expires October 31, 1988